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No. 80-1734

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DR. MILTON MARGOLES,
Petitioner,

v.

DR. THOMAS W. TORMEY, JR.,
and LEROY L. DALTON,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RESPONDENTS' BRIEF

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QUESTIONS PRESENTED

1. Whether petitioner was denied his rights to procedural due process by the licensing authorities of the State of Illinois.

2. Whether the evidence establishes the respondents' active involvement in or distortion of the Illinois licensure proceedings.

3. Whether the evidence establishes that respondents' defamation (assuming such defamation for the sake of argument only) was in conjunction with the denials of licensure in Illinois.

INDEX

RESPONDENT'S BRIEF

Page

QUESTIONS PRESENTED i

OPINIONS BELOW 1

JURISDICTION 1

STATUTE INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 3

I. Introduction 3

II. Petitioner Was Afforded Procedural Due Process 4

III. Petitioner Was Afforded A Fair Hearing 4

IV. Petitioner Has Failed To Establish Both Prongs Of The "Stigma Plus" Test 5

CONCLUSION 7

STATUTE CITED

42 U.S.C. sec. 1983 2,5

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OPINIONS BELOW

The petition adequately and fully identifies the opinions below. It is the March 12, 1981, opinion of the United States Court of Appeals for the Seventh Circuit, affirming the District Court's granting of judgment notwithstanding the verdict, which is here under consideration.

JURISDICTION

The jurisdictional requisites are set forth in the petition.

STATUTE INVOLVED

42 U.S.C. sec. 1983 — Civil action for deprivation of rights:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

Since respondents agree with substantial portions of the material set forth in the petitioner's statement of facts, respondents set forth herein only those facts with which they disagree.

Respondents disagree with the numbered paragraphs set forth on page four of the petition and identified by petitioner as "key facts." While it is certainly true that by making affirmative answers to certain of the questions on the special verdict, the jury found those matters as fact, and while certain assumptions were made by the Court of Appeals, the posture of this case does not permit the conclusion that such matters are established fact.

Respondents disagree with the content of pages eight and nine of the petition. Again, while there was some evidence at trial to support the alleged facts with respect to the affidavit, and while the jury appears to have accepted that evidence, respondents do not agree that those matters have been established as fact.

On page sixteen of the petition, petitioner states that in addition to seeking reinstatement of Count I as to respondents herein, he also seeks reinstatement of Count IV as to all of the original defendants. Count IV is inappropriately referred to with respect to this petition since it was not a subject of the appeal of which petitioner seeks this court's review. It was the subject of the earlier appeal to the United States Court of Appeals for the Seventh Circuit decided on August 15, 1978 (Pet. App. A-28).

REASONS FOR DENYING THE WRIT

I. Introduction.

At the outset it should be noted that respondents disagree with petitioner's entire analysis of this case. Despite petitioner's efforts to present this case as involving complex constitutional issues, it is, as decided by the Court of Appeals, essentially a sufficiency of the evidence case. The decision of the Court of Appeals (excluding several pages of background and introduction) is relatively brief, straightforward, easy to understand and it flows smoothly and logically from one point to the next. In a sentence, the Court of Appeals held that there was no foreclosure by Illinois authorities of petitioner's rights to procedural due process (Pet. App. A-8), that petitioner failed to prove respondents' active involvement in or distortion of licensure proceedings in Illinois (Pet. App. A-9), and that petitioner has failed to prove that the respondents were connected with the denial of licensure in Illinois, thereby failing to meet the second prong of the "stigma plus" test (Pet. App. A-13).

II. Petitioner Was Afforded Procedural Due Process.

On this point there is no dispute. The Court of Appeals held that there was no allegation that Illinois officials had denied petitioner a fair hearing, that, as a matter of fact, uncontradicted evidence established more than ample opportunity to be heard, and that there was, therefore, "no foreclosure by any Illinois authorities of plaintiff's rights to procedural due process." (Pet. App. A-8). Petitioner agrees (Pet. 17-18).

III. Petitioner Was Afforded A Fair Hearing.

Having concluded that petitioner was afforded full due process at his hearings before Illinois authorities, the court proceeds next, in its analysis, to the question of whether respondents could have unconstitutionally interfered with petitioner's right to a fair hearing in Illinois in some other fashion. The court examines the possibility that the fairness of the hearing could have been affected by an extremely active role in the Illinois proceedings by respondents, but concludes that the District Court was correct in holding that petitioner simply "failed to prove defendants' *active involvement in or distortion of* the Illinois proceedings." (Pet. App. A-9).

Petitioner attempts to read confusion in the court's observation that the case would be different if there were some evidence of collusion or conspiracy and seeks help in Judge Cudahy's concurring opinion. But there is no suggestion in the opinon that collusion or conspiracy must be shown to meet the test, only that such a showing would in fact have been adequate. On the contrary, the court carefully points out that it does not attempt to determine the extent of involvement which would be necessary by an official of one state or government entity in the proceedings of a second state or entity for the reason that whatever degree of involvement would be necessary to establish a claim under 42 U.S.C. sec. 1983, the facts of this case do not meet it (Pet. App. A-9, f.n. 8). The evidence in this case is so weak that it does not require a determination of the precise test. In short, petitioner's claim dies because of insufficiency of the evidence. That is not a constitutional issue and is undeserving of this Court's attention.

IV. Petitioner Has Failed To Establish Both Prongs Of The "Stigma Plus" Test.

In its analysis of this question, the Court of Appeals assumes that respondents maliciously or in bad faith provided the false information about petitioner to Illinois officials, while expressing serious doubt as to whether petitioner did, in fact, prove either falsity or maliciousness (Pet. App. A-9-A-10). Petitioner argues, based upon the assumption of falsity and maliciousness, that the court's conclusion that respondents were connected with the denial of licensure in Illinois results in one of two inevitable conclusions: first, that the decision is in conflict with the criteria; or second, that the decision is distinguished because of the interstate setting.

It is respectfully submitted that one of those two conclusions is not inevitable. A third conclusion which can follow the court's analysis and its assumption, for the sake of argument only, that respondents supplied false information to Illinois, and that they were malicious in doing so, is precisely the conclusion that the court reached. Petitioner failed to prove that respondents were connected with the denial of licensure. "The affiliation between stigma and denial of a government benefit is absent. ... [p]laintiff's claim fails to establish that defendants' defamation was *'in conjunction'* with the denials of licensure in Illinois. The Illinois authorities and the Illinois denials of licensure were separate and distinct from any defamatory statements made by these Wisconsin officials." (Pet. App. A-13).

Petitioner seems to adopt the position that the causal connection between the alleged defamation and the denial of licensure follows from the jury's conclusion that it did. But that begs the question. The District Court granted judgment notwithstanding the verdict and the Court of Appeals has affirmed. The Court of Appeals has plainly held, and indeed has stated that petitioner "has failed to prove that these defendants were connected with any denial of a government benefit or privilege, i.e. licensure." (Pet. App. A-13). Again, petitioner's claim fails as a result of insufficiency of the evidence, not as a result of misapplication of the law.

CONCLUSION

For all of the foregoing reasons it is respectfully submitted that this case does not present a significant question of law requiring resolution by this Court. The Court of Appeals has held, assuming, for the sake of argument only, that respondents distributed false information with a malicious intent, that petitioner has failed to prove that such action resulted in a loss of fairness in the hearing with petitioner received in Illinois, or that such action was done in conjunction with the denial of licensure by Illinois officials. It is respectfully submitted that the petition for writ of certiorari should, therefore, be denied.

Respectfully submitted,

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